



CONFLICT OF INTEREST COMMISSIONER

The Honourable H.A.D. OLIVER, Q.C.

ANNUAL REPORT

2002

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**BRITISH
COLUMBIA**

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The Honourable Claude Richmond, MLA
Speaker of the Legislative Assembly
of British Columbia
Room 207, Parliament Buildings
Victoria, British Columbia
V8V 1X4

Mr. Speaker:

I have the honour to present the Annual Report of the Office of the Conflict of Interest Commissioner for the period January 1, 2002 to December 31, 2002.

This report is submitted pursuant to section 15 of the *Members' Conflict of Interest Act*, Chapter 287 of the Revised Statutes of British Columbia.

Yours truly,

H. A. D. Oliver
Commissioner



TABLE OF CONTENTS

INTRODUCTION.....	1
OVERVIEW.....	1
INDEPENDENCE.....	2
STANDARDS.....	2
THE INQUIRY INTO THE CONDUCT OF THE HON. GLEN CLARK, MLA, PREMIER OF BRITISH COLUMBIA.....	3
Delay in Publication.....	6
The Clark-Farnworth Dialogue.....	8
The "Karmelita Letter"	9
Penalty.....	12
Proposed Statutory Amendment	13
A Procedural Conflict	15
ACCEPTING HOSPITALITY, GIFTS AND BENEFITS	17
A COLLABORATIVE EFFORT	20
FINANCE AND ADMINISTRATION	21
Budget Summary	22
FINAL WORDS.....	23

**ANNUAL REPORT
OF THE CONFLICT OF INTEREST COMMISSIONER
2002**

INTRODUCTION

This 10th Annual Report of the Commissioner of Conflict of Interest covers the period of January 1, 2002 to December 31, 2002.

It deals principally with a formal inquiry, the result of which and the reasons for the necessary delay in publication are dealt with later in this Report.

OVERVIEW

The Conflict of Interest Commissioner provides advice and counsel to Members of Cabinet and of the Legislative Assembly both formally in writing and informally in confidential interviews.

It has been the constant endeavor of the Commissioner to encourage Members to make the fullest use of the informal consultation process and the drop-in formal complaints and demand for investigations and inquiries illustrates the effectiveness of that policy and the ready cooperation by Members in its development.

When a Member recognizes that there may be some ethical doubt about how to proceed in a situation and comes to discuss it with the Commissioner, the Commissioner is likely to discuss a variety of approaches to the problem, with a view to assisting the Member in recognizing any obstacles and pitfalls, as well as the possible impression on members of the public (including members of the media) of various potential solutions.

In these informal discussions, the Commissioner endeavors to leave the final decision as to the course to be selected to the Member. When a proposed course of action is illegal, the Commissioner will clearly say so.

When it is legal but imprudent, the Commissioner will endeavor to point that out – but the ultimate decision of whether or not to pursue an imprudent course is a political one for the Members themselves.

INDEPENDENCE

The Commissioner – like his opposite numbers elsewhere in Canada at the provincial level – is a totally independent officer of the Legislative Assembly. I regard that absolute independence as vitally necessary to the proper functioning of Conflict, Ethics or Integrity Commissioners, if uncomplimentary canine comparisons in the media are to be avoided.

I am pleased to be able to report that throughout my term of office there has never been any political attempt to influence my decisions or opinions.

STANDARDS

It is an imperative of public administration that to function effectively the government and the public service of a democracy must have the trust and confidence of the public they serve, and Members of the Legislative Assembly recognize that they must act with complete integrity, and uphold the highest standards of conduct in office.

This obligation requires more of Members than merely acting within the law.

THE INQUIRY INTO THE CONDUCT OF THE HON. GLEN CLARK, MLA, PREMIER OF BRITISH COLUMBIA

Early in 2002, it was finally possible for Cabinet to unseal the Conflict Commissioner's Report in the Clark Inquiry. It will be useful to consider the history of that Report.

The *Members' Conflict of Interest Act* applies to the then Premier in his capacity as a Member of the Legislative Assembly and this is the basis for the Opinion from my office.

The basic substance and purpose of this particular Annual Report will be not only to provide the usual information that is required of an annual report, but, in keeping with the events that occurred over the past year, to review specifically s. 7 of the *Members' Conflict of Interest Act*. It is this section that I am going to focus on and hopefully this will provide some insight to both Members of the Legislative Assembly and the public into the spirit of the *Members' Conflict of Interest Act*.

Section 7 provides the regulatory framework for gifts and benefits offered to Members of the Legislative Assembly of British Columbia. It reads as follows:

Accepting Extra Benefits

- 7 (1) *A member must not accept a fee, gift of personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.*
- (2) *Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.*
- (3) *If a gift or personal benefit referred to in subsection (2) exceeds \$250 in value, or if the total value received directly or indirectly from one source in any 12 month period exceeds \$250, the member must immediately file with the Commissioner a disclosure statement, in the form prescribed by the regulations, including*
 - (a) *the nature of the gift or benefit,*
 - (b) *its source, and*
 - (c) *the circumstances under which it was given and accepted.*

This will be an important reference for Members of the Legislative Assembly of British Columbia. Members should apply this section's principles to their positions and keep in mind that integrity exists when someone does the right thing when no one is looking. The reference to the section will also provide the public with information on what constitutes a gift or benefit. This is a question put to us frequently and the general public has a lively interest in what benefits and gifts are being offered to their elected officials. Judging from the responses to this office after the Glen Clark report was released, the public are under the misconception that MLA's are actively and regularly solicited and offered a wide array of benefits and gifts of significant value. Sadly, as Winston Churchill once said, "A lie gets halfway around the world before the truth has a chance to get its pants on."

The focus on s. 7 of the Act may appease those who, due to this year's incidents, are now harbouring concern about what constitutes "hospitality", "benefits" and "gifts".

My involvement as Conflict of Interest Commissioner in considering possible involvement of the Honourable Glen Clark, MLA in the government's granting of approval in principle for the establishment of a charitable casino at the North Burnaby Inn began with requests by Premier Clark himself. These requests followed the RCMP's execution of search warrants at his the home on March 2, 1999 in relation to a criminal investigation of matters involving the 545738 B.C. Ltd./ North Burnaby Inn casino proposal. It subsequently became apparent that one of the principals of the company behind this proposal, Mr. Dmitrios Pilarinos, was a friend and neighbour of Mr. Clark, and that Mr. Pilarinos had played a significant role in construction work on one or both of Mr. Clark's home in Vancouver and cabin in the Okanagan.

Under the *Members' Conflict of Interest Act* (the "Act"), the opinion of the Conflict of Interest Commissioner as to compliance with the Act by a Member of the Legislative Assembly or of Executive Council (Cabinet) may be requested

- by a Member, as to his or her own compliance [s. 18(1)],
- by a Member as to compliance by another Member [s. 19(1)],
- by a member of the public [s. 19(2)],
- by the Legislative Assembly as a whole [s. 19(4)], or
- by Executive Council [s. 19(3)].

By a request dated March 5, 1999, Mr. Clark, then Premier of British Columbia, asked that I review the Cabinet record on an "urgent priority basis" and provide my interim opinion as to whether it was Cabinet that made the decision to grant approval in principle of a gaming license for the North Burnaby Inn. On March 8, 1999, following my review of the Cabinet records for 1998, I released an interim opinion stating that these records disclosed that no such decision was made by Cabinet.

Also on March 5, 1999, Mr. Clark requested that I provide an opinion as to whether he had been in a conflict of interest in the granting of approval in principle of a gaming license for the North Burnaby Inn.

On March 12, 1999, Executive Council made the same request pursuant to s. 19(3) advising that, at the request of Premier Clark, this request should replace his earlier request on his own behalf. In subsequent correspondence, I ascertained that Executive Council wished my opinion as to whether the Honourable Glen Clark was in breach of any of the sections of the Act, given that it includes prohibitions which are defined in terms other than conflict of interest, and that my investigation should encompass all relevant matters whether before or after the announcement of approval in principle.

I decided to proceed by way of Inquiry pursuant to s. 21 of the Act, and was thus able to compel the attendance of witnesses and to take evidence on oath (which I would not have been entitled to do had I proceeded pursuant to Mr. Clark's own request). Pursuant to s. 21(6) of the Act, my opinion on this matter was to be reported to Cabinet. I proceeded as requested by Cabinet: the process was complex and long drawn out and involved the taking of sworn evidence from 22 witnesses. I completed my Report under the *Members'*

Conflict of Interest Act on January 25, 2001 and delivered it under seal to the Cabinet Secretary. It is far too voluminous (at approximately 100 pages) to be conveniently included in this Report but may be viewed by interested readers on our website at www.gov.bc.ca/oci.

Delay in Publication

In October 2000, charges under the Criminal Code of Canada were laid against Mr. Clark and it became obvious that the premature release of my Report to Cabinet prior to the conclusion of the criminal proceedings and any consequent appeals might result in prejudice either to the Crown or to the defence. The Associate Chief Justice of the Supreme Court, to avoid such prejudice from arising, asked that my Opinion remain sealed until the end of the criminal process or further Order of the Court and all possible steps were taken to comply with this request. I accordingly delivered my Report under sealed cover to the Cabinet Secretary upon its completion on January 25, 2001 and it remained sealed until November 19, 2002, the day after the appeal period in the criminal proceedings (in which Mr. Clark was acquitted, and Mr. Pilarinos convicted) had expired.

My Report can be summarised as follows:

The *Members' Conflict of Interest Act* Inquiry involved over 40 days of hearing, the taking of the evidence of 22 witnesses, the consideration of legal submissions by commission counsel, counsel for Mr. Clark and for others. The evidence and the arguments have been carefully analysed in my formal Opinion. To put the case in its most simple form, it involved

Mr. Dmitrios Pilarinos, a building contractor. Mr. Pilarinos was a neighbour and personal friend of Mr. Clark. Their families were friends, their children went to school together, they had frequent contact through their children's activities and through social activities in the neighbourhood. In March 1997, the Government of B.C. announced a new gaming policy which provided for expansion of gaming in the province through the approval of new bingo and casino facilities. A new Lotteries Advisory Committee was appointed to

assist with the implementation of this policy. On July 31, 1997 the Government issued a Request for Proposals ("RFP") which outlined the terms and conditions under which it would evaluate proposed casinos and bingo halls. Mr. Pilarinos and his business partner, Mr. Steven Ng, submitted a proposal for a new charity casino to be operated at the North Burnaby Inn. The RFP required proponents to provide extensive personal and financial background information. Mr. Pilarinos and two friends agreed to become partners in submitting a proposal in the RFP process and retained lawyers, accountants and architects to assist them in developing their proposal which contemplated a 30 table charitable casino operated at the North Burnaby Inn in Burnaby.

Burnaby Council was opposed to the expansion of gaming within its boundaries and indicated that they were not in favour of the location of a casino at the North Burnaby Inn. Mr. Pilarinos told Mr. Clark of his intention to submit a proposal in the RFP process during the fall of 1997.

In the latter half of 1997 there were discussion between Mr. and Mrs. Clark and Pilarinos about possible renovation work to the Clark's residence including the master bedroom and a roof replacement, involving an addition to the back of the house and certain other improvements such as a gas fireplace and a new deck. The work was carried out during the summer of 1998 with Mr. Pilarinos acting as general contractor, supervising the sub-contractors and doing the framing work for the addition and the deck, replacing fibreglass insulation on an existing main floor deck and helping Mr. Clark put siding on the house. Mr. Clark paid Mr. Pilarinos for the cost of materials and the cost of the sub-contractors but Pilarinos refused to accept any payment for his own work. I found it a fact that Mr. Pilarinos failed to charge the customary 15% mark-up for general contractor's overhead and that he rendered valuable construction services to Mr. Clark for which ultimately the latter received no payment. Mr. Clark testified that he presented Mr. Pilarinos with a carved hunting knife, but in the result Mr. Clark was placed in a position of obligation to Mr. Pilarinos thus placing him in a conflict of interest position. I concluded that Mr. Clark had a private interest within the meaning of the *Members' Conflict of Interest Act* due to the construction work done on his home in Vancouver by Mr. Pilarinos.

The Clark-Farnworth Dialogue

The proposals submitted in the RFP process by the end of November 1997 were evaluated according to pre-established criteria: corporate experience/expertise, executive experience/expertise, financial strength, strategic and operational business plan and knowledge of relevant British Columbia markets. Evaluation teams made up of professional consultants scored the proposals according to a point scale assigned to each of the criteria. These evaluations were finalized by an evaluation committee reporting to the Lotteries Advisory Committee. In February 1998, the Hon. Michael Farnworth became Minister of Employment and Investment responsible for Gaming whilst the evaluation of gaming proposals in the RFP process was still underway. He was, thus, the minister responsible for gaming throughout the period during which the government's approval in principle of the successful proposals was announced.

Minister Farnworth was aware from the outset that Mr. Clark had a relationship with one of the proponents in the RFP process. A day or two prior to his formal appointment as Minister, he had met with Mr. Clark and was advised that he would be receiving this portfolio including responsibility for gaming. In the course of this meeting, Mr. Clark advised the Minister that a friend of his had submitted a proposal in the RFP process. Minister Farnworth's recollection is that Mr. Clark specified that the proposal was for a gaming facility in Burnaby and is sure that Mr. Pilarinos' name was mentioned during the discussion but cannot be sure if that related specifically to the Burnaby Casino. During the discussion, Mr. Clark told Minister Farnworth that as a result of the relationship he did not want to be involved in consideration of his friend's proposal and that the Minister should therefore handle the matter himself. For the reasons set out in my Opinion following a careful analysis of the evidence, I concluded that Mr. Clark had no official role in the decision-making process, the outcome of which was announced on December 17, 1998 by Minister Farnworth and that Mr. Clark exercised no official duty or function in relation to the North Burnaby Inn proposal. There was no doubt in my mind that Mr. Clark should have refrained from engaging in any discussion with Minister Farnworth relating to the outcome of Mr. Pilarinos' proposal though I was not satisfied that this amounted to an

offence under the Act. Similarly, although I was uncomfortable with the manner in which Mr. Clark disclosed his personal relationship with Mr. Pilarinos to Minister Farnworth upon the latter's appointment as Minister of Employment and investment, the evidence before me did not support the conclusion that Mr. Clark was thereby deliberately seeking to obtain a personal financial gain. It will be seen that at the end of this Report, I have added a recommendation for a statutory amendment to clarify the nature and content of a declaration of interest which may be of assistance to Members in the future.

The "Karmelita Letter"

While matters relating to the application of Messrs. Ng and Pilarinos remained outstanding, an anonymous letter was faxed on February 9, 1999 to Mr. Clark's constituency office in Vancouver. This letter read as follows:

PREMIERE [sic]

THIS IS URGENT IF YOU WANT TO SAVE YOUR ASS

Fact: You broke rules to help Pilarinos and Ng get a casino license

Fact: You consider Pilarinos friend and supporter

Fact: Pilarinos did free construction work for you

Rumor: You have a piece of the action in the casino

Fact: Pilarinos and Ng are not the only partners. They have one more silent partner with a long criminal record. You have been used to accommodate the entrance of gangsters in the casino business in B.C.

Fact: The story is out. A lot of people have been indiscreet

Fact: The Liberals know the story

Fact: A special criminal investigation has targeted you, Pilarinos, Ng, and their gangster partners.

To save your reputation and your government:

- (a) Kill the casino application IMMEDIATELY
- (b) 'Clean' your home and all offices of any evidence IMMEDIATELY
- (c) Careful how you use your telephones and faxes
- (d) Destroy this piece of paper NOW -- I risk my career to save your sorry ass.

You owe me big time you jerk

Remember the name 'Karmelita'

Mr. Clark decided to share this letter with Mr. George Ford who had recently assumed the position of Deputy Minister to the Premier. He told Mr. Ford that he had no involvement with Mr. Pilarinos in respect of his casino proposal but confirmed that Mr. Pilarinos, who was a family friend, had done some construction work for him for which he would not accept payment. Mr. Clark testified that he asked Mr. Ford to assist and review the process of the North Burnaby Inn proposal and make sure it was handled appropriately and above reproach and Mr. Ford testified that Mr. Clark asked him to do whatever he felt necessary to follow-up on the Karmelita letter. The Karmelita letter disclosed that its author was aware of Mr. Clark's friendship with Mr. Pilarinos and that Pilarinos had done free construction work for Mr. Clark and advised Mr. Clark in order to save his reputation and his government to "kill the casino application". The effect of the Karmelita letter was to reveal allegations which had serious implications for Premier Clark personally. The direction in the Karmelita letter that Mr. Pilarinos' casino application be "killed in order to save Mr. Clark's reputation" might be seen to suggest that the allegations would not come to light if the casino did not proceed. Even more significantly, a decision by government which prevented the casino from proceeding would assist in refuting the allegations that Mr. Clark had improperly intervened to see that Mr. Pilarinos was granted permission to operate a casino. It appeared to me, examining the matter objectively, that there was a possible advantage to Mr. Clark in having the proposal fail. I concluded that the Karmelita letter gave rise to a private interest for Mr. Clark, that if Mr. Pilarinos' proposal did not proceed, the allegations in the letter might not come to light or if they did, the failure of the proposal would assist in refuting the allegations that Mr. Clark had somehow intervened to see that it would proceed. I cannot say that it is unreasonable to perceive that Mr. Clark's decision to share the Karmelita letter with Mr. Ford and then to assign him to review the government's consideration of the proposal, even without express instructions to Mr. Ford to effect any particular outcome, was motivated by the possibility that Mr. Ford might be able to engineer a justifiable end to the proposal. I have accepted Mr. Clark's submission that he was not in fact so motivated, however, apparent conflict of interest turns on the perception of a reasonably well informed observer, not the actual motivations of the Member involved. I was not prepared to conclude that the decision to reject the location

change requested by Messrs. Ng and Pilarinos was made on the basis of Mr. Clark's private interest that the proposal not proceed. My concern, however, was with the fact that this question arose at all. It arose because of the involvement in the decision-making process of an individual, Deputy Minister Ford, who was aware of the allegations against Mr. Clark.

Mr. Ford is an outstanding public servant of long experience and I unhesitatingly accepted his testimony that the recommendations he made were only to ensure that the appropriate public policy decision was made.

It would have been a happier situation had Mr. Ford not been aware of the allegations against Mr. Clark as he set about his task of reviewing and/or supervising the decision-making process in respect of Mr. Pilarinos' proposal. Had Mr. Clark wished Mr. Ford to review the decision-making process in regard to the North Burnaby Inn proposal, he should, at a minimum, have refrained from sharing the Karmelita letter with him so that Mr. Ford might go about his work free from the suggestion that he was furthering Mr. Clark's private interest. Alternatively, if Mr. Clark felt Mr. Ford was the most appropriate person to consider the response to the letter, he ought to have instructed him that he should not become involved in any decision-making with respect to the RFP process. In that case, a reasonable person could not conclude that there was any connection between Mr. Clark's private interest and any decision made in regard to Mr. Pilarinos' proposal.

I have concluded that in the circumstances, whilst there was no actual conflict of interest, Mr. Clark, in his decision to involve Mr. Ford in the way that he did, placed himself in an apparent conflict of interest in contravention of s. 3 of the Act.

I considered with care the evidence relating to the construction work rendered by Mr. Pilarinos and the submissions on his behalf that Pilarinos had done work for other people in the neighbourhood without payment and that this reasonably would have prevented Mr. Clark from questioning Mr. Pilarinos' motives but in my view it strains

credulity to suggest that Mr. Clark would not have recognized that Mr. Pilarinos was unlikely to have provided services of the magnitude he did had Mr. Clark not been Premier. I do not consider Mr. Pilarinos' efforts to be within the range of favours normally granted between friends, even close friends. In all the circumstances, I am satisfied that Mr. Clark must have been aware that Mr. Pilarinos' gift of free construction work was connected directly or indirectly with Mr. Clark's duties as Premier and that he should not have accepted it. Had Mr. Clark so wished he could without difficulty have persuaded Mr. Pilarinos to accept payment by pointing out that he could not accept this gift due to a perceived conflict of interest. It was Premier Clark's decision to accede to Mr. Pilarinos' wish not to receive any compensation that completed the acceptance of a benefit. I accordingly found that Mr. Clark accepted the benefit connected directly or indirectly with the duties of his office contrary to s. 7 of the Act.

In making this finding I recognize that I have the benefit of hindsight but I consider it entirely proper for the Act to catch both those violations carried out deliberately and those which arise through inadvertence. It is on the question of appropriate penalty that the distinction between these two types of violations may be taken into account.

I recognize that problems involving potential issues of conflict of interest may quite inadvertently arise in the course of Members' daily conduct. One of the most useful functions of the Conflict of Interest Commission is to give confidential and, if requested, even formal written advice to Members in matters of this kind. Had such advice been sought in this case, I like to think that there would have been no need for this Inquiry.

Penalty

In considering my recommendations as to penalty, I found that the criminal investigation in relation to this matter had led to Mr. Clark's resignation as Premier and that he had, thus, already paid the ultimate political price.

Having been asked by Cabinet for my recommendation as to whether Mr. Clark's legal expenses in these proceedings should be paid out of public funds, it was my recommendation that one half of such expenses should be so paid.

Proposed Statutory Amendment

In the course of my Inquiry, I considered the wording and intent of s. 10 of the *Members' Conflict of Interest Act* and made a recommendation to Cabinet as follows:

Recommendations regarding Section 10 of the *Members' Conflict of Interest Act*

When asked, it has been my advice to Members of Cabinet that the prudent course of conduct when they might be seen to have a private interest in a matter coming before government is to prepare a letter documenting their obligation to avoid any involvement and their instruction that they receive no briefing with respect to the matter and that they be warned in advance of any meeting where the matter might be discussed. Such a letter or memorandum should then be addressed to their Deputy Ministers and circulated to all those with responsibility for the Member's activities and the information provided to him or her.

Essential to the effectiveness of such directions is that the precise nature of the conflict not be disclosed. Excusing oneself on the basis that someone is "a friend" or, conversely, that someone has been an opponent or otherwise, the source of difficulty for the Member threatens to undermine the very objective of avoiding allegations that the Member has attempted to influence the matter because of his or her private interest.

As a result, it is my view that the standard set by the Act on this point falls somewhat short of prudent practice. Section 10 of the Act states as follows:

Procedure on Conflict of Interest

10 (1) *A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present a meeting considering the matter,*

(a) disclose the general nature of the conflict of interest, and

(b) withdraw from the meeting without voting, or participating in the consideration of the matter.

Section 10 goes on to provide that such disclosure is to be recorded and filed with the Conflict of Interest Commissioner for inclusion in a central record kept for this purpose, which is accessible to the general public.

Section 10 thus contemplates that a Member may wait until the very moment of discussion of the matter in which he or she might be said to have a conflict of interest before absenting him or herself. The far preferable course of action, in my view, is for the Member to ensure not only that he or she is absent from the meeting altogether, but receives no written materials or verbal briefing with respect to the matter in question.

In addition, I have some concern that the requirement that the Member disclose "the general nature of the conflict" does not adequately highlight the danger reviewed above that revealing too much about the nature of one's conflict can, inadvertently or otherwise, give rise to allegations that one has influenced the matter. This might be recognized by Monty Python enthusiasts as the "nudge-nudge, wink-wink" syndrome. To my mind, where a Member finds him or herself at a meeting where a matter involving a potential conflict of interest is to be considered, the proper approach is for the Member to reveal only that he or she has a potential conflict and only the most general statement of the reason why, without revealing the specifics in any way. For example, disclosure of Mr. Clark's position in this case might have been phrased: "I have a potential conflict due to my knowledge of one of the proponents". The key is to disclose no indication of how the Member's private interest might be furthered.

A Procedural Conflict

When this matter was referred to me by Executive Council for an opinion under the *Members' Conflict of Interest Act*, I became aware of an investigation of possible Criminal Code offences by the RCMP. I gave consideration to the question of whether my Inquiry should be deferred until the conclusion of any preliminary hearing, trial, and subsequent appeals that might occur.

I was aware from experience that criminal proceedings of this nature might well take several years before their ultimate conclusion and that my investigation and Inquiry under s. 19(3) of the Act might accordingly be deferred for a very considerable period of time.

After careful consideration, I concluded that the conflict of interest Inquiry should proceed without delay.

The conflict of interest statute of Ontario provides for the following:

Police Investigation or Charge

32. *If the Commissioner, when conducting an inquiry, discovers that the subject-matter of the inquiry is being investigated by police or that a charge has been laid, the Commissioner shall suspend the inquiry until the police investigation or charge has been finally disposed of, and shall report the suspension to the Speaker. 1994, c.38, s.32*

The British Columbia statute has no such provision. What then should be the policy when a complaint to the Conflict of Interest Commissioner and a criminal investigation take place simultaneously: should one to yield to the other?

When a conflict of interest complaint involves a Minister or, as in this case, the Premier of the Province, what does the public interest require? The following – at times conflicting – considerations apply:

1. It is important for the people of British Columbia to know whether they are being governed by a corrupt Minister.
2. It is important for a Minister facing criminal prosecution to defend him or herself without the risk of having to confront a jury biased by prior publication of an adverse conflict of interest report.
3. The Conflict Commissioner can compel witnesses to appear and testify under oath including the suspected Minister (who, in a criminal trial, could not be forced to give evidence).
4. A principal purpose of the *Members' Conflict of Interest Act* is the swift determination of any wrongdoing by a Member of the Legislature or the Cabinet.
5. A Minister (like any other defendant) is entitled to a fair trial: this private interest of a defendant in criminal proceedings must be upheld as a matter of public interest.

The following question then arises: which of the two conflicting interests shall take precedence – the public interest of ensuring that ethical standards are promptly upheld and that corrupt conduct in government is detected and eliminated, or the defendant's interest in ensuring a fair trial in the criminal court?

Is the answer to be found in legislation? Or should the conflict Inquiry proceed on the understanding that if it appears in its course that there has been criminal activity, the Commissioner should refer the matter to the RCMP and suspend the hearing?

When there appears to be no evidence of criminal activity or when it seems clear that criminal activity cannot be established beyond a reasonable doubt or where the degree of criminality or the seriousness of the criminal offence involved are minimal, should the

Conflict of Interest Commissioner proceed with the conflicts hearing – on a balance of competing public interests?

Not only must the answer be one that is fair to the public and fair to the person accused of misconduct, but the cost to the taxpayer of criminal proceedings and the cost of an Inquiry under the *Members' Conflict of Interest Act* must be borne in mind.

In the case of Premier Clark, it will be remembered that he was acquitted by the criminal court of any criminal wrongdoing but was found in the conflict of interest Inquiry to be in breach of the *Members' Conflict of Interest Act* – different standards of proof being applicable in the different types of proceeding. It seems not unlikely that had the conflict of interest Inquiry been completed before any criminal proceeding had been instituted, any criminal prosecution might conceivably have been thought unnecessary.

Even though the problem of how best to investigate allegations of corrupt ministerial conduct is one which I hope and believe is unlikely to arise in British Columbia on any but the rarest of occasions, the necessary protocol for dealing with such allegations should be in place in order to illuminate any risk of unseemly procedural disputes and resultant delay.

This is a matter which ought to be addressed – whether by legislation or by a procedural agreement between the Office of the Attorney General and the Conflict of Interest Commissioner.

ACCEPTING HOSPITALITY, GIFTS AND BENEFITS

Section 7 of the *Members' Conflict of Interest Act* reads as follows:

Accepting Extra Benefits

- 7 (1) *A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.*
- (2) *Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.*
- (3) *If a gift or personal benefit referred to in subsection (2) exceeds \$250 in value, or if the total value received directly or indirectly from one source in any 12 month period exceeds \$250, the Member must immediately file with the commissioner a disclosure statement, in the form prescribed by the regulations, indicating*
 - (a) *the nature of the gift or benefit,*
 - (b) *its source, and*
 - (c) *the circumstances under which it was given and accepted.*

For the most part, this section is self-explanatory. Protocol gifts are small tokens of appreciation with which all public speakers are familiar. They include plaques, small embroidered banners, framed certificates, pens, books and similar signs of esteem as well as reasonable hospitality when a Member attends a function in his official representative capacity.

There are innumerable social events which a Member is, by virtue of his office, obliged to attend. To put it as tactfully as possible, some of them are even more enjoyable than others. Thus, a football ticket will not always be seen as a benefit to a ballet fan, and an evening of early Elizabethan music might not be a hip-hop aficionado's idea of entertainment. Attendance in either case would probably be regarded as a social obligation. Nevertheless, Members will always be careful to distinguish a social obligation from a boondoggle.

Prior to accepting gifts or offers of hospitality, Members might ask themselves such questions as:

- 1) Who are these people and why are they offering me this?
- 2) Would this offer be made if I were not an MLA?

If this is described as a charity event, how much of the money actually goes to the charity?

- 4) How will it appear to my constituents and the public in general if I attend?
- 5) How will attending or receiving this **further the interests of:**
 - a) my constituents?
 - b) my Ministry?
 - c) my fellow British Columbians?

Members will use great caution in accepting gifts, hospitality and any other benefits that **could** have the appearance of placing them under some sort of obligation to the donor. The British Columbia Legislature is very conscious of the importance of protecting the integrity of our political process and has incorporated in the *Members' Conflict of Interest Act* a particularly stringent clause to prevent any perceptions of conflict (even when no actual conflict exists).

- 2 (2) *For the purposes of this Act, a member has an **apparent conflict** [emphasis added] of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.*

Thus, Members will be extremely careful when accepting tickets paid for by corporations where the event is not related to political party activities. These include tickets to sporting events, dining, travel, entertainment and cruises. Regardless of whether there is a charitable component, it might be unwise for a Member of the Legislative Assembly to accept a ticket from an organization that does business with the Government of British Columbia, without first consulting with the Commissioner and reviewing the circumstances. Of course there are exceptions – when there is clearly a social obligation or protocol involved where the MLA is asked to speak or is delegated to represent the government on the dais – as might be the case for a world-class event such as the Vancouver Molson Indy. Members must be representing the government, or their constituents and preferably, have a specific purpose or function in attending said event.

A COLLABORATIVE EFFORT

The responsibility for disclosure of the receipt of gifts, benefits and hospitality to the Commissioner falls squarely on the shoulders of Members of the Legislative Assembly of British Columbia.

Let me emphasize that, as Commissioner, *I have no way of knowing what benefits, gifts or hospitality are or have been conferred on Members unless Members inform me.* The Commissioner depends on the integrity of Members to inform him of all benefits including hospitality and gifts by submitting the prescribed form (Form 5 – Member's Statement of Gifts and Personal Benefits).

Members are normally careful to run doubtful offers of hospitality or benefits by the Commissioner before attending an event or accepting gifts. On rare occasions, an MLA will attend this office holding Form 5, having already taken advantage of whatever gift or benefit has been conferred, only to be advised that it was probably not wise for them to have attended or participated in the event or function. While the event or function may not be of interest to the public at large, in either a positive or a negative way, there must be a blanket code of reference for all gifts, benefits or hospitality as it applies to our elected officials – that code of reference is firmly in place within s. 7 of the *Members' Conflict of Interest Act*.

Members should also involve the Commissioner in the acceptance of anything that could be *interpreted* as a gift or benefit. For example, a friend of an MLA may have offered his vacation condo at a mountain retreat to the Member and the Member's family. The Member makes use of this offer and while at the ski hill one of her children mentions that she is staying in "that condo over there for nothing". When the lift operator calls our office to protest that "the MLA is getting a perk" we have to respond.

The groundwork is in place. If the value of the gift or benefit exceeds \$250.00 either on one occasion, or over a cumulative period of one year, it or they must be disclosed.

At times the Member may not be aware of what the value of the gift might be. For example, a Member might be presented with a hand-carved native talking stick as a protocol gift. If the Member is unsure, the procedure would be to err on the side of caution and disclose the gift to the Commissioner.

FINANCE AND ADMINISTRATION

For the past 11 years, the Legislative Comptroller's Office, the office that provides the financial administration for the Legislative Assembly as a whole, has provided us with all our financial and payroll requirements and requests. There was no cost associated with this service and we appreciate all the assistance that was provided to us by the staff in that office.

The Select Standing Committee of Finance and Government Services now conducts financial reviews of the independent offices of the Legislature. While the Conflict of Interest Commissioner is described in our Act as an Officer of the Legislative Assembly (rather than an Officer of the Legislature), we are pleased to meet with the Committee to discuss various issues as they relate to this office.

The Committee recommended that the Officers of the Legislature look at implementing a common set of shared services in order to achieve cost savings in their budgets for the 2003/04 and 2004/05 fiscal years, and they have included the Office of the Conflict of Interest Commissioner in the scope of this undertaking. I have advised the Committee that because of the small scale of our operation, this office has required only minimal payroll and accounting services, which are currently provided free of charge by the Legislative Comptroller.

It is the constant endeavour of my small office to conduct its' operations at minimal expense to the taxpayer, and we try to resolve any matter arising under the *Members' Conflict of Interest Act* in the most reasonable and cost-efficient manner possible.

In the past 12 years we have had two full-scale Inquiries involving Conflict of Interest – each involving a Premier of the Province. I have included the first Inquiry (Vander Zalm/Fantasy Gardens) as this issue was the scaffolding for which the creation of this office was assembled and it was these events that gave rise to the passage and proclamation of the statute. It was not carried out under the provisions of the *Members' Conflict of Interest Act*.

The Office of the Conflict of Interest Commissioner employs three administrative staff persons. Two of these staff members, Daphne Thompson and Jill Robinson, occupy the same position of Administrative Officer on a job-share basis. They are the "front line" employees. The third, Betsi Curdie is our Senior Research Officer who works three days a week. Some of her responsibilities are to provide research and initial analysis on inquiries and potential opinions. These three staff members are essential to the office and largely instrumental in managing the day-to-day administration of the office. The office is open and operational five days a week, however due to the limited number of staff, on occasion, it is manned and operated by a single employee. The Commissioner is available to all Members for immediate consultation and advice at all hours on every day of the year.

Budget Summary

<u>Budget</u>	<u>Expenditure</u>	<u>Balance</u>
314,000.00 ¹	201,796.33	112,203.67
292,000.00 ²	168,599.84	123,400.16

¹ Budget figures for fiscal year of April 2001 through March 2002

² Budget figures for April 2002 through December 2002

FINAL WORDS

The year 2002 was one in which all eyes looked towards our provincial politicians and their behavior. It is my sense that in the case of Mr. Clark, it was a lack of foresight, rather than malice that put our former Premier in the position in which he found himself. I sincerely hope that this situation will be the last of its type that I encounter as the Conflict of Interest Commissioner. I should also add that I feel a great sense of regret in witnessing the fall of such a promising career. The damage to the reputation of our political system is considerable and the fall-out has been harmful to the good name of the Legislative Assembly and could have been prevented by timely consultation with the Commissioner who once again ventures to remind *all Members* that prevention is better than cure!

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